

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Minority Television Project, Inc.	)	MB Docket No. 17-313
License of Noncommercial Television	)	CSR-8946-M
Station KMTP, Channel *32	)	
For Carriage of KMTP(TV), San	)	
Francisco, California	)	
	)	
	)	
	)	

**RESPONSE OF DISH NETWORK L.L.C. TO CARRIAGE COMPLAINT OF  
MINORITY TELEVISION PROJECT, INC.**

DISH Network L.L.C. responds to the Complaint for Carriage Against DISH Network filed by the Minority Television Project, Inc., licensee of station KMTP-TV of San Francisco, California (“KMTP”) (the “Complaint”). The Complaint alleges that DISH “unlawfully denied carriage on the system” and requests “an order directing Dish to begin carriage of KMTP to restore carriage.”<sup>1</sup> As explained below, DISH respectfully requests that the Complaint be dismissed.

**I. BACKGROUND**

DISH provides Direct Broadcast Satellite (“DBS”) television services in the United States. DISH’s address is 9601 S. Meridian Blvd., Englewood, Colorado 80112. Today, DISH carries KMTP on its DBS system pursuant to a valid mandatory election that KMTP made on September

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<sup>1</sup> Complaint at 1.

16, 2014 pursuant to 47 C.F.R. §76.66(d).<sup>2</sup> That valid mandatory election entitled KMTP to carriage on DISH's DBS system for the carriage election cycle that began on January 1, 2015 and ends December 31, 2017. According to DISH's records, KMTP's 2014 election letter was sent to DISH via certified mail, return receipt requested.

In the instant Complaint, KMTP notes,<sup>3</sup> correctly, that DISH denied its request for mandatory carriage for the election cycle that begins January 1, 2018 and ends December 31, 2020. As the Complaint admits, however, KMTP sent its carriage election letter via "Priority Express Mail, return receipt requested,"<sup>4</sup> rather than using the method required in the Commission's rules, which is "certified mail, return receipt requested," *see* 47 C.F.R. 76.66(d)(ii). KMTP gives no explanation for its choice to use a method of delivery that violates the requirements in the Commission's rules, which clearly specify that "[a]n election request made by a television station **must** be in writing and sent to the satellite carrier's principal place of business, **by certified mail, return receipt requested.**"<sup>5</sup>

## II. THE COMPLAINT SHOULD BE DISMISSED AS PREMATURE

As an initial matter, the Complaint should be dismissed as premature, because KMTP did not follow the remedial procedures set forth in the Commission's rules governing satellite

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<sup>2</sup> Letter from Booker Wade, General Manager, KMTP, to Melisa Ordonez, DISH Network, September 16, 2014.

<sup>3</sup> Complaint at 1.

<sup>4</sup> Complaint at 1-2

<sup>5</sup> 47 C.F.R. 76.66(d)(ii) (emphasis added).

broadcast signal carriage. Pursuant to 47 C.F.R. § 76.66(m), “[w]hen a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.”<sup>6</sup> According to DISH’s records, we have received no such correspondence from KMTP, nor does the Complaint state that KMTP attempted to send any.

The Commission’s rules further provide that “[t]he satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.” Only after that exchange of correspondence should the broadcaster file a complaint with the FCC: “A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with §76.7 of title 47, Code of Federal Regulations.”<sup>7</sup>

Because DISH has not been afforded the benefit of the remedial procedures set forth in the Commission’s rules that should predate the filing of any carriage complaint, the Complaint should be dismissed as premature.

### **III. THE COMPLAINT FAILS TO SUPPORT THE REQUESTED RELIEF**

As explained above, the Complaint is premature and should be dismissed. But on the merits, the Complaint fails to justify the relief sought. The Complaint admits that KMTP failed to

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<sup>6</sup> 47 C.F.R. § 76.66(m)(1).

<sup>7</sup> 47 C.F.R. § 76.66(m)(3).

use the delivery method required by the Commission's rules. Instead, KMTP argues that "Priority Express Mail is not only a functional equivalent of Certified Mail, it is a superior service in that it provides next day delivery and it is traceable. Put differently, Certified Mail is a lesser included service to Priority Express Mail."<sup>8</sup>

DISH disagrees with KMTP's views about the sufficiency of its chosen delivery method. The Commission adopted the requirement to use certified mail, return receipt requested, for mandatory carriage elections, and if it wished to permit alternate forms of service, it would have changed its rules accordingly. There is no basis for KMTP to conclude that using Priority Express Mail was sufficient to perfect its mandatory carriage rights on DISH's DBS system.

Nor is there any merit to KMTP's observance that "Priority Express Mail did not exist at the time of the adoption of the Section 76.66."<sup>9</sup> If that is true, then, if anything, it militates in favor of using the exact delivery method that *was* in existence at the time the rules were promulgated.

Finally, KMTP still has an avenue to be carried on DISH even though KMTP failed to perfect its mandatory carriage rights for the cycle that begins January 1, 2018. At any time, a full power broadcast station may approach a satellite carrier such as DISH and initiate negotiations to be carried under a retransmission consent agreement, pursuant to 47 C.F.R. 76.65. Indeed, had KMTP initiated the remedial correspondence required under Section 76.66(m), DISH might have had the opportunity to consider such an arrangement.

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<sup>8</sup> Complaint at 2, n.2.

<sup>9</sup> *Id.*

#### **IV. CONCLUSION**

For the reasons set forth herein, DISH respectfully requests that the Complaint be dismissed, both because it is premature and because it fails to allege a violation of the Commission's rules.

**DISH Network L.L.C.**

**By:**



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November 29, 2017

## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 29<sup>th</sup> day of November, 2017, a copy of the foregoing RESPONSE OF DISH NETWORK L.L.C. TO CARRIAGE COMPLAINT OF MINORITY TELEVISION PROJECT, INC. was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via Certified Mail, return receipt requested† or electronic mail\*:

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